IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER No.790 OF 2006

Shri Parag Prakash Shimpi. .. Appellants

Versus

Mrs. Priyadarshani Parag Shimpi. .. Respondents

...

Mr. Joseph G. Thattil and Pratik Y. Lubri for the Appellant.

CORAM : D.G. KARNIK, J

DATED : 17th November 2006

P.C.:

1. Heard Learned Counsel for the appellant. This appeal is directed against the order dated 13th September 2006 passed by the learned Judge of the Family Court permitting the respondent - wife to enter the matrimonial home.

2. The appellant is the husband and he has filed Marriage Petition No.813 of 2004 against the respondent for dissolution of marriage on the several grounds. In the petition he moved an application for injunction restraining the wife from entering the matrimonial home and the injunction was granted exparte. Thereafter, respondent wife made an application for vacating the order of injunction and permitting her to enter the matrimonial home. By the order dated 30th September 2006, the learned Judge of the Family Court allowed the application and vacated the earlier order of injunction and permitted the wife to enter the matrimonial home. That order is impugned in this appeal.

3. In S.P. Achala V/s. A. Appi Reddy reported in 2005(I) DMC 345 (SC), the Supreme Court has held that the deserted wife continuing in occupation of the flat obtained by her husband was entitled to continue to occupy the house. In V. Mala Vishwanathan V/s. P.B.Vishwanathan, reported in 2003 (II) DMC 809, Calcutta High Court has held that wife has a right to reside in the matrimonial home and no injunction can be granted restraining her from entering the matrimonial house.

Family Court relied upon the two decisions reported to above and the application of the wife was allowed. I am in respectful agreement with the view expressed by the Calcutta High Court. The Trial Court was, therefore, right in vacating the order of injunction and permitting the wife to enter in the matrimonial home.

4. For these reasons, there is no merit in the Appeal which is dismissed summarily.

(D.G. KARNIK, J)